In each of the prior art documents, the mechanical joint is made by deforming a tube or square section and then placing another tube in position. By deforming is meant that the tube is effectively crushed so that the opposing side walls of the tube are crushed together to form a thinner portion of the tube and in which the other member is received. Good examples of this crushing effect are provided in Figure 3 of Cruson and Figures 3 and 6 of Burton. The need to crush the tube in accordance with the prior art documents means that the top and bottom walls of the tube are necessarily deformed in that the crushed displaced material has to extend upwardly and downwardly as illustrated, for example, in Figure 4 of the Cruson document. This squashing and enlarging effect means that the portion of tube becomes unsightly and therefore does not follow the same lines of the rest of the tube around the remainder of the tube such that the area in which the join has occurred is clearly obvious to the onlooker. In contrast, in the current invention, rather than deforming the tube to bring the two side walls into an adjacent relationship, one of the side walls and part of the top and bottom walls of the tube are removed so as to form the section referred to in the specification as the opening or aperture and leave a band of material at the mechanical joint location.

Thus, in the current invention a band of material is formed and this is referred to for example in page 2, paragraph 4 of the specification as filed and with reference to, for example, Figures 1A to H of the invention where the band portion at the location of the aperture is referred to by the reference numeral 12. The removal rather than squashing of the tube material means that no lateral deformation of the tubular material occurs at the location where the joint is to take place and so the lines of the tube remain constant along the length of the tube, including at the location of the joint which therefore, in turn, makes the appearance of the joint significantly more pleasing to the eye. It also means that the insert which is provided can be sized so as to follow the lines of the tube.

The claims have been amended to more clearly indicate this feature and we believe that with this amendment and the supporting argument that the invention should be allowed to proceed to grant.

A further clear difference which should be mentioned and pointed out is that in each of the prior art documents the joint provided is to allow a first tubular member to be engaged directly onto and intermediate the ends of a further elongate member. This is in contrast to the preferred embodiment of current invention wherein the mechanical joint is formed between a first tubular member and an insert in the form of a second member and, in turn, a further tubular member can be connected to the insert and therefore there is a clear difference between the two arrangements.

Likewise, the rejection of the remaining claims under 35 U.S.C. § 103(a) as unpatentable over Burton et al. in view of Cruson is respectfully traversed for all the same reasons set forth above. Moreover, it is untenable to combine the teachings of Burton with Cruson.

It is improper to combine references to achieve the invention under consideration unless there is some incentive or suggestion in the references to do so.

The Court of Appeals for the Federal Circuit has repeatedly held that under Section 103, teachings from various references can be combined only if there is some suggestion or incentive to do so. ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F2d 1572, 221 USPQ 929 (CAFC 1984).

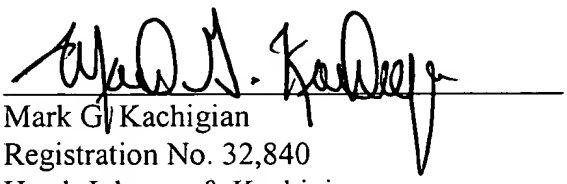
Stated another way:

> It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps...The references themselves must provide some teaching whereby the applicant's combination would have been obvious. In re Gorman, 18 USPQ2d 1885 (CAFC 1991).

The Examiner is required to follow the law as set forth by the Federal Circuit. In summary, the combination of patents to achieve the claims of the present invention is untenable.

It is believed that the application is now in condition for allowance and such action is earnestly solicited. If any further issues remain, a telephone conference with the Examiner is requested.

Respectfully submitted,



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